

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

MERLI PALACIOS,

Plaintiff,

v.

LOWE'S HOME CENTERS, LLC,

Defendant.

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CIVIL ACTION NO. 7:22-cv-00212
JURY TRIAL DEMANDED

DEFENDANT LOWE'S HOME CENTERS, LLC'S
NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1441 and Local Rule CV-81, Defendant LOWE'S HOME CENTERS, LLC, hereby removes to this Court, the state court action described in Paragraph 1 below. Pursuant to 28 U.S.C. § 1446(a), Defendant sets forth the following "short and plain statement of the grounds for removal."

A.

THE REMOVED CASE

1. The removed case is a civil action first filed with the 93rd Judicial District Court of Hidalgo County, Texas, on May 19, 2022, styled *Merli Palacios v. Lowe's Home Centers, LLC*, under Cause No. C-1860-22-B.

B.

DOCUMENTS FROM REMOVED ACTION

2. Pursuant to Local Rule CV-81, Defendant attaches the following documents to this Notice of Removal:

1. An index of matters being filed;
2. All executed process in the case;
3. Pleadings asserting causes of action (e.g., petitions, counterclaims, cross actions, interventions, and all answers to such pleadings;
4. All orders signed by the state judge;
5. The docket sheet; and
6. A list of all counsel of record, including addresses, telephone numbers and parties represented.

The aforementioned documents are attached to this Notice of Removal as ***Exhibit “A.”***

C.
REMOVAL IS TIMELY

3. Plaintiff, Merli Palacios, (hereinafter referred to as "Plaintiff"), filed the present civil suit against Defendant Lowe's Home Centers, LLC, ("Lowe's") in the 93rd Judicial District Court of Hidalgo County, Texas (the "State Court Action"), on May 19, 2022. Plaintiff served LOWE'S with the Original Petition (the "Petition"), on June 1, 2022. In the Petition, Plaintiff asserts negligence causes of action against Lowe's based on premises liability.

4. Since the thirtieth day of service of the Petition falls on July 1, 2022, this Notice of Removal is filed timely pursuant to 28 U.S.C. § 1446(b).

D.
VENUE IS PROPER

5. The United States District Court for the Southern District of Texas, McAllen Division, is the proper venue for removal of the State Court Action pursuant to 28 U.S.C. § 1441(a) because the 93rd Judicial District Court of Hidalgo County,

Texas, is located within the jurisdiction of the United States District Court for the Southern District of Texas.

E.
DIVERSITY OF CITIZENSHIP EXISTS

6. This is a civil action that falls under the Court's original jurisdiction pursuant to 28 U.S.C. § 1332 and is one that may be removed to this Court based on diversity of citizenship in accordance with 28 U.S.C. §§ 1441 and 1446. Removal is proper because there is complete diversity between all of the parties.

7. At the time of the filing of the Original Petition, Plaintiff, Merli Palacios was and still is, to Defendant's knowledge, a resident of Hidalgo County, Texas.

8. Defendant LOWE'S HOME CENTERS, LLC, is a foreign Limited Liability Company organized and existing under the laws of the State of North Carolina and a resident of the State of North Carolina. The Limited Liability Company is comprised of six managing members, Akinjide Falaki who is domiciled in and a resident of the State of North Carolina; David R. Green, who is domiciled in and a resident of the State of North Carolina; Beth R. MacDonald who is domiciled in and a resident of the State of North Carolina; Tiffany L. Mason, who is domiciled in and is a resident of the State of North Carolina; Brandon J. Sink, who is domiciled in and a resident of the State of North Carolina, and Gary White, who is domiciled in and a resident of the State of North Carolina. Additionally, LOWE'S principal office is located at 1000 Lowe's Boulevard, Mooresville, North Carolina 28117. Pursuant to 28 U.S.C. § 1332(c)(1), LOWE'S is not a resident of the State of Texas.

9. Because the Plaintiff is a resident of the State of Texas and Defendant

LOWE'S and all of its members are residents of the State of North Carolina, complete diversity of citizenship exists pursuant to 28 U.S.C. § 1332.

F.

THE AMOUNT IN CONTROVERSY REQUIREMENT IS SATISFIED

10. In the Original Petition, the Plaintiff alleges that she seeks damages of "of more than \$1,000,000.00 and a demand for judgment for all other relief to which Plaintiff deems herself entitled."¹

11. Based on the aforementioned facts pled in the Petition, the State Court Action may be removed to this Court by the Defendant in accordance with the provisions of 28 U.S.C. § 1441(a) because: (i) this is a civil action pending within the jurisdiction of the United States District Court for the Southern District of Texas; (ii) this action is between citizens of different states; and (iii) the amount in controversy as specifically pled by the Plaintiff exceeds \$75,000, exclusive of interest and costs.

G.

FILING OF REMOVAL PAPERS

12. Pursuant to 28 U.S.C. § 1446(d), Defendant is providing written notice of the filing of this Notice of Removal to all counsel of record and is filing a copy of this Notice with the Clerk of the 389th Judicial District Court of Hidalgo County, Texas, in which this action was originally commenced.

¹ See Plaintiff's Original Petition at p. 1, ¶ 2.01.

H.
CONCLUSION

13. Defendant LOWE'S HOME CENTERS, LLC hereby prays that the above-captioned action be removed from the 93rd Judicial District Court of Hidalgo County, Texas, and requests that further proceedings be conducted in the United States District Court for the Southern District of Texas, McAllen Division, as provided by law.

Respectfully submitted,

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ATTORNEYS FOR DEFENDANT
LOWE'S HOME CENTERS, LLC

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on July 1, 2022, the foregoing *Notice of Removal* was electronically filed, as required by the United States District Court for the Southern District of Texas, using the Court's CM/ECF filing system, which will provide notice and a copy of this document, with attachments, to the following, who are indicated to be registered ECF filers in the United States District Court for the Southern District of Texas:

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☐ FACSIMILE
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☐ REGULAR, FIRST CLASS MAIL
☒ CM/ECF
☐ CERTIFIED MAIL/RETURN RECEIPT REQUESTED

/s/ Robin R. Gant

Robin R. Gant